

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-109472-13

Date:

April 03, 2013

### LEGEND

X =

A =

Trust 1 =

Trust 2 =

State =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to a letter dated February 12, 2013, submitted on X's behalf by its authorized representative, requesting relief pursuant to § 1362(f) of the Internal Revenue Code.

X was incorporated on Date 1 under the laws of State and elected to be an S corporation effective Date 2. X's sole owner was an individual, A, until Date 3. On Date 3, A transferred shares of X stock to Trust 1 and Trust 2. X represents that Trust 1 and Trust 2 are eligible to be electing small business trusts (ESBTs) within the meaning of § 1361(e) effective Date 3. However, the trustees of Trust 1 and Trust 2 made no elections under § 1361(e)(3) to treat Trust 1 and Trust 2 as ESBTs. Therefore, Trust 1 and Trust 2 were not permissible shareholders and, as a result, X's S corporation election terminated on Date 3.

X represents that X and its shareholders have filed consistently with the treatment of X as an S corporation and Trust 1 and Trust 2 as ESBTs. X further represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments the Commissioner may require, consistent with the treatment of X as an S corporation.

Section 1362(f) provides, in pertinent part, that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination steps were taken so that the corporation is a small business corporation, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the information submitted and the representations made, we conclude that the termination of X's S corporation election on Date 3 was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date 3 and thereafter, provided X's S corporation election was valid and the election was not otherwise terminated under § 1362(d), and provided that the trustees of Trust 1 and Trust 2 file ESBT elections effective Date 3 with the appropriate service center within 120 days following the date of this letter. A copy of this letter should be attached to the ESBT elections.

This ruling is conditioned upon X and all its shareholders treating X as having been an S corporation for the termination period and thereafter. Moreover, the shareholders of X must include their pro rata share of the separately stated and nonseparately computed items of income, loss, deduction, or credit as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. If X or its shareholders fail to treat themselves as described above, this ruling is null and void.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed on whether X was or is otherwise eligible to be treated as an S corporation or whether Trust 1 or Trust 2 are eligible to be ESBTs.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, we are sending copies of this letter to your authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

/s/

Richard T. Probst  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes

cc: